Supreme Court, U.S.
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No. 98-1430

In The
Supreme Court of the United States

October Term 1998

RONALD A. BROWN,

Petitioner,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. DID RESPONDENT BALTIMORE CITY'S AFFIRMATIVE ACTION PLAN, WHICH SETS EMPLOYMENT QUOTAS AND PREFERENCES FOR HIRING MINORITIES AND WOMEN IN UPPER LEVEL MANAGERIAL POSITIONS, WITHOUT A HISTORY OF PAST DISCRIMINATION, GIVE RISE TO A PRESUMPTION AND INFERENCE THAT IT WAS AN OFFICIAL REGULATION, CUSTOM, USAGE AND POLICY OF EMPLOYMENT DISCRIMINATION WITH IN THE MEANING OF 42 U.S.C. § 1981 AND § 1983, UNDER WHICH THE CITY COMPTROLLER ACTED, WHEN SHE PURGED WHITE MALES FROM UPPER LEVEL MANAGEMENT OF THE COMPTROLLER'S OFFICE OF BALTIMORE CITY IN ORDER TO EMPLOY MINORITIES AND WOMEN?

II. DID RESPONDENT BALTIMORE CITY'S AFFIRMATIVE ACTION PLAN, WHICH SETS EMPLOYMENT QUOTAS AND PREFERENCES FOR HIRING MINORITIES AND WOMEN IN UPPER LEVEL MANAGERIAL POSITIONS, WITHOUT A HISTORY OF PAST DISCRIMINATION, GIVE RISE TO A PRESUMPTION AND INFERENCE THAT IT WOULD BE A "FUTILE GESTURE" FOR THE PETITIONER, A WHITE MALE, TO REAPPLY FOR EMPLOYMENT, AFTER THE PETITIONER'S POSITION WAS ABOLISHED AND ELIMINATED FROM THE CITY BUDGET AND SIMULTANEOUSLY RE-CREATED IN SUBSTANTIALLY SIMILAR FORM, IN ORDER TO INCREASE THE NUMBER OF MINORITIES AND WOMEN?

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ARGUMENT

Respondent's statement that the Petitioner failed to offer the affirmative action plan as evidence, after the Court granted the Motion In Limine, is incorrect. During the course of the trial proceedings on March 24, 1997, Petitioner offered for evidence those portions of the Respondent's Employee Handbook devoted to the affirmative action plans, marked as Plaintiff's Exhibit 12A, and the affirmative action plan documents themselves, marked as Plaintiff's Exhibits 12B, C and D.[1] The District Court sustained the Respondent's objection to the admission of these exhibits. (R.APP.1).[2]

Respondent incorrectly charges Petitioner with misrepresenting the facts of the case. The Petitioner's statement of facts is clearly in accord with the facts stated in Chief Judge Wilkinson's dissenting opinion, (APP. 20-27), as well as those in the majority opinion. (APP. 1-8, 10-12).

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[1] Plaintiff's Exhibit D is reproduced in the Appendix to the Petition for Writ of Certiorari (APP. 67-106).

[2] The transcript is set forth in a one-page appendix hereto. (JA 646-47; Tr. 577-78).

Respectfully submitted,

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Reporter's Official
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RONALD BROWN,

Plaintiff,

vs.

MAYOR AND CITY COUNCIL
OF BALTIMORE,

Defendant.

Baltimore, Maryland
Civil Action No. WMN-95-387
March 24, 1997

REPORTER'S OFFICIAL TRANSCRIPT
OF PROCEEDINGS
(TR. 577-578)

BEFORE:

THE HONORABLE WILLIAM M. NICKERSON

MR SCHULMAN: There is still a 1981 claim in the case, and in that view I am going to move Exhibits 12 A, 12 B, 12 C and 12 D. These are the affirmative action documents. 12 A being the city handbook. 12 B, 12 C, 12 D themselves being the actual plans.

I understand that the Court has ruled with regard to the 1983 action there has been no relationship between any plan that the city may have had and

the action taken in this case. I just point out to the Court but we are offering that at this time as part of our evidence.

MR. RUCKLE: Your Honor, I would object based on the issue of relevance. Again, this issue is not in before this Court and it has no probative value and it's highly prejudicial and it's not anything that has affected Mr. Brown's employment decisions.

THE COURT: The objection is sustained.